

Prepared by and Return to:

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Key West, FL 33041-1409

(305) 809-3770

RE No. 00027280-000000

## DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS

This Declaration of Affordable Housing Restrictions (hereinafter "Declaration") is made and entered into this 10 day of October, 2006, by Michael Ingram (hereinafter "Declarant"), whose principal mailing address is 604 Whitehead Street, Key West, Florida, 33040.

This Declaration applies to the two (2) upstairs apartments on the real property located at 400 Truman Avenue, a/k/a 1001 Whitehead Street, Apartments 201 and 202, respectively, in Key West, Florida, which is more fully described in the Legal Description attached hereto and incorporated herein as Exhibit A (hereinafter "Property").

**WHEREAS**, the Property is subject to regulation pursuant to Sections 122-1465 through 122-1500 of the Code of Ordinances of the City of Key West, Florida, as amended from time to time ("Work Force Housing Ordinance"), which ordinance establishes affordable housing categories to facilitate the development of housing designed to meet the needs of people employed by the local economy, establishes eligibility requirements for occupants of work force housing, and restricts the sales price of the Property and requires that the Property be sold at a price substantially less than fair market value to a purchaser within a specific income range; and

**WHEREAS**, Declarant as well as subsequent purchasers and tenants will benefit from the limitations and regulations placed on the Property by operation of this Declaration; and,

**WHEREAS**, the intent of the City of Key West (hereinafter "City") in imposing reasonable regulations on the Property is to establish and maintain the affordability of the Property for persons with incomes within a specified range; and

**WHEREAS**, the intent of Declarant is to preserve through this Declaration the affordability of the Property and to assign to the City the right to enforce compliance with this Declaration; and

**NOW, THEREFORE**, the Declarant agrees that the Property shall be held and conveyed subject to the following affordable housing restrictions, covenants and conditions, which shall run with the Property and be binding on all

parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns for the entire term of this Declaration.

## **I. DEFINITIONS**

- A. "Declarant" shall mean the owner of the Property and any subsequent purchaser, devisee, transferee, grantee or holder of title of the Property or any portion of the Property.
- B. "Transfer" means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Declarant retains title.
- C. "Transferee" shall mean an individual, or individuals, who receive a Transfer of the Property from the Declarant.

All other terms shall have the same meaning given to them in the City's Work Force Housing Ordinance.

## **II. TERM AND ENFORCEABILITY**

A. This Declaration shall run with the Property and bind the Declarant, his or her heirs, legal representatives, executors, successors in interest and assigns, for a period of fifty (50) years from the effective date of this Declaration. At any time during the final year of the restriction, the City, at its sole discretion, may act by Resolution to renew this Declaration for an additional 50-year term.

B. The Property is held and hereafter shall be held, conveyed, encumbered, used, rented, leased and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

C. Any transferee or purchaser of the Property, or of any portion of or interest in the Property, by the acceptance of a deed therefore, whether from Declarant or from any subsequent purchaser of the Property, or by the signing of a contract or agreement to purchase the same, shall, by the acceptance of such deed or by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

D. In order to preserve through this Declaration the affordability of the Property for persons with incomes within a specified range, the Declarant hereby grants and assigns to the City the right to monitor and enforce compliance with this Declaration. Declarant otherwise reserves the rights necessary to implement the provisions of this Declaration.

### **III. OCCUPANCY, LEASING AND USE OF THE PROPERTY**

A. The subject property shall be operated, managed and otherwise administered as affordable work force housing and such other uses incidental to residential use as may be permitted by local zoning and land use regulations.

1. Occupancy shall be restricted to households or persons who derive at least 70 percent of its or his/her total income from gainful employment in Monroe County.

2. At the time the subject unit is leased, the total income of the eligible household or persons shall not exceed 120 percent of the median household income for Monroe County (adjusted for family size). During the occupancy of the rental unit, the household's income may increase to an amount not to exceed 160 percent of the median household income for Monroe County (adjusted for family size). In such event, the tenant's occupancy shall terminate at the end of the existing lease term.

3. The monthly rent for the rental unit, not including utilities, shall not exceed 30 percent of that amount which represents 120 percent of the monthly median household income of Monroe County (adjusted for family size).

4. Eligibility is based on proof of legal residence in Monroe County for at least one consecutive year.

5. Priority shall be given to families of four or more members for larger sized affordable work force housing units.

6. The income of eligible households shall be determined by counting only the first and highest paid 40 hours of employment per week of each unrelated adult. For a household containing adults related by marriage or a domestic partnership registered with the City, only the highest 60 hours of combined

employment shall be counted. The income of dependents regardless of age shall not be counted in calculating a household's income.

7. In the event that a tenant's income shall exceed the maximum allowable income under this section and such shall occur for the first time during the last three months of a tenancy, then the landlord and tenant may extend a lease for a period of one year at the affordable rate.

8. The board of adjustment may review a household's income and unique circumstances to determine eligibility and conformance with the intent of this ordinance to assure that people in need are not excluded and people without need are not included.

#### **IV. DEFAULTS AND REMEDIES: ASSIGNMENT OF RENTS**

A. Upon any violation of the provisions of this Declaration the City may declare a default under this Declaration by delivering written notice thereof to the Declarant. After providing written notice of default, the City may apply to a court of competent jurisdiction for specific performance of the Declaration, for an injunction prohibiting a proposed sale or transfer in violation of this Declaration, for a declaration that a prohibited transfer is void, or for any such other relief as may be appropriate.

B. Assignment of rents: Declarant hereby assigns to City the right to receive the rents due or collected during the entire period the Property is occupied in violation of any of the terms of this Declaration.

C. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

#### **V. REQUIREMENTS FOR WRITTEN REPORTS FROM DECLARANT**

Declarant shall provide a written report to the City each year on February 1, or on such other date as specified by the City in writing, which includes a statement that Declarant has complied with all provisions of this Declaration, or includes Declarant's explanation of any violation of any provision of this Declaration. The report shall be submitted within thirty (30) days of the specified date to the City, or to such other person or address designated by the City. Failure to provide a report in a timely manner, or any misrepresentations on the report, shall constitute a default under this Declaration.

## VI. GENERAL PROVISIONS

A. The City may assign its rights and delegate its duties hereunder in writing without the consent of Declarant. Upon such assignment the City shall notify the Declarant.

B. If any action is brought to enforce the terms of this Declaration, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

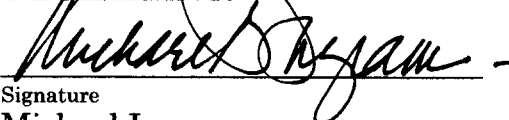
C. If any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Declaration, and this Declaration shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

D. The terms of this Declaration shall be interpreted under the laws of the State of Florida and venue shall lie in Monroe County, Florida.

E. All notices required herein shall be sent by certified mail, return receipt requested, to the Declarant at the address of the Property or such other address as designated in writing by Declarant and filed with the City and to the City or its designee at PO Box 1409, Key West, Florida 33041-1409, or such other address that the City may subsequently provide in writing to the Declarant.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date written below.

DECLARANT:

  
Signature

Michael Ingram  
Print Name

October 10, 2006  
Date

STATE OF FLORIDA  
COUNTY OF MONROE

Sworn to or affirmed and subscribed before me this 10<sup>th</sup> day of October, 2006, by Michael Ingram, who is personally known to me \_\_\_\_\_ has \_\_\_\_\_ as \_\_\_\_\_ identification.



  
NOTARY PUBLIC

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

On the Island of Key West and is part of Tract 11 according to William A. Whitehead's Map of said island delineated in February , A.D. 1829, , but now better known as part of Lot 3 of Square 3 of said Tract 11 according to C.W. Tift's map of the City of Key West delineated in June, A.D. 1874:

COMMENCING at the corner of Division and Whitehead Streets and running thence in a Northeasterly direction along Division Street 50 feet; thence at right angles in a Southeasterly direction 89 feet, 7 inches; thence at right angles in a Southwesterly direction 50 feet out to Whitehead Street; thence at right angles along the line of Whitehead Street in a Northwesterly direction 89 feet, 7 inches back to the Point of Beginning.

a/k/a 400 Truman Avenue, Key West, Florida 33040  
and 1001 Whitehead Street, Apartment 201  
and 1001 Whitehead Street, Apartment 202

MONROE COUNTY  
OFFICIAL RECORDS

## **EXHIBIT A**